

SUPREME COURT OF FLORIDA

CASE NO.: SC96629

INQUIRY CONCERNING A JUDGE, NO. 99-09  
RE: PATRICIA A. KINSEY

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Respondent's Motion for Rehearing

Respondent, pursuant to Rule 9.330, Florida Rules of Appellate Procedure, moves for rehearing of the following points respondent believes the court overlooked or misapprehended in its opinion issued January 30, 2003.

1. Charge 4 is based on statements made by Judge Kinsey during a radio debate with the incumbent. JQC alleged the statements violated the canons because they “exhibited a hostility or apparent hostility towards defendants in criminal cases.” Both the Notice of Formal Charges and the Amended Notice of Formal Charges quoted the two excerpts from the debate which JQC contended violated the canons. JQC contended that her failure to disavow a caller’s statement that he knew she was “pro-law enforcement” and her “attempt to portray the incumbent” as “still in that defense mode” left the impression she would not rule in an even-handed and impartial manner.

The Hearing Panel found her “not guilty” of the “failure to disavow” but “otherwise guilty as charged” of Charge 4. Upon review, this court disagreed and

found that the comments “addressed the manner in which Judge Kinsey’s background as a prosecutor prepared her for the position of county judge” and they did not violate Canon 7.

Although at this point the hearing panel and this court had found Judge Kinsey “not guilty” of the original allegations of Charge 4, this court on its own initiative found a violation of Charge 4 based on other comments Judge Kinsey made during the debate. Focusing on a fragmented quote which contained the words “judge’s responsibility” and “absolutely a reflection of what the community wants,” this court linked them together to conclude she was contending a judge has a responsibility to be absolutely a reflection of what the community wants in violation of the canons.

While the hearing panel’s findings did include a one paragraph discussion of the “absolutely a reflection of what the community wants” comment, this comment was not alleged as the basis of a violation in the notices of formal charges, was not addressed by either respondent or JQC in their briefs, and is not a comment that would be reasonably encompassed by the allegation of “hostility or apparent hostility towards defendants in criminal cases.”

The transcript of the debate clearly indicates the comment was made during a portion of the discussion which centered on accountability and sentencing philosophy and whether the particular judge to which a case is assigned can affect the outcome of

the case. It is also clear the transcript is not complete and/or accurate. The transcriber indicated an interruption in one portion of Judge Kinsey's comments and, by use of an ellipsis, that other portions of her comments were inaudible. The transcript shows the following dialogue between the program's host, radio personality Luke McCoy, and Judge Kinsey:

Luke McCoy: Are you suggesting that the particular judge makes the difference?

Pat Kinsey: It absolutely makes the difference? (sic) And I . . .

Luke McCoy: But it's the same law?

Pat Kinsey: It's the same law, but Judge's are accountable to the community. A judge's responsibility is to make sure (interruption) . . . it's absolutely a reflection of what the community wants . . .

McCoy then asked the incumbent to comment on the extent to which a particular judge, the judge's personality and the judge's belief might have a bearing on the case.

Even if we assume the incomplete transcript is an accurate record of Judge Kinsey's remarks,<sup>1</sup> the court has misapprehended those remarks. When the two fragments are examined in context of the debate, it is obvious she was not stating a judge must decide cases in accordance with community feelings but was expressing (1) her belief that trial judges, like all elected officers, are accountable to the electorate

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<sup>1</sup> It is impossible to determine from the transcript either the length of the interruption in her comments or what Judge Kinsey said during the gaps indicated by the ellipsis. However, it is clear that when she used the word "it's," she was referring to something other than a judge's responsibility.

and (2) her personal philosophy that a judge has a responsibility to reflect community values during the sentencing process. At most, these incomplete comments are no more than a statement of her personal philosophy that a judge should consider community values in determining an appropriate sentence and are protected speech.

2. In upholding the hearing panel's finding of violations of charges 7 and 9, the court apparently overlooked the recent decision of the United States Court of Appeals, Eleventh Circuit, in Weaver v. Bonner, 309 F.2d 1312 (11th Cir. 2002), which respondent believes is directly on point and supports her contention that the minor, acknowledged errors in the two brochures are not knowing misrepresentations but are speech protected by the First Amendment to the United States Constitution.

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I certify copies of the foregoing have been furnished to:

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